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Article

Does Remorse Count? ICTY Convicts' Reflections on Their Crimes in Early Release Decisions

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Abstract

Based on all publicly available International Criminal Tribunal for the Former Yugoslavia (ICTY) early release decisions as of May 31, 2017, this explorative article empirically analyzes, systematizes, and evaluates how ICTY convicts reflected on their past crimes during early release proceedings and how this affected decision-making of the ICTY President regarding their level of rehabilitation and early release. For this purpose, we developed an analytical framework distinguishing between acknowledgement of responsibility and remorse, as two forms of reflection on the past crimes, and their general and personal dimensions. Our analysis demonstrates that of all 53 individuals early released at the ICTY, 36% were considered sufficiently rehabilitated and a part of their sentence pardoned without any information regarding their outlook on the crimes they had been convicted of. Only 19% of the early released prisoners acknowledged their personal responsibility and expressed remorse for the crimes they committed. Others denied, only partially accepted responsibility and/or showed remorse on a general level, which, however, did not bar their early release. The article argues that this haphazard practice brings into question the ICTY legacy with respect to its goal of offender rehabilitation and its potential effects on reconciliation in the Former Yugoslavia.

Keywords

ICTY, early release, remorse, acknowledgement of responsibility, rehabilitation

More than two decades ago, the United Nations Security Council passed the Resolution 827 establishing the International Criminal Tribunal for the Former Yugoslavia (ICTY), the first ad hoc international criminal court set up since the post–WWII Nuremberg and Tokyo tribunals. The Tribunal was created to prosecute persons responsible for war crimes, crimes against humanity, and genocide committed at the territory of the Former Yugoslavia since 1991. Volumes of (critical)

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scholarship have been written about the work of the ICTY, its establishment, laws and procedures, sentencing, victims and witnesses testifying before the court, or its contributions to history writing or effect on reconciliation in the postconflict societies (cf. D'Ascoli, 2011; Kutnjak Ivković & Hagan, 2011; Morris & Scharf, 1995; Orentlicher, 2008; Stover, 2005; Wilson, 2011). As the Tribunal's mandate came to an end in December 2017, the ICTY's legacies in all these different areas are being discussed and evaluated. In this article, we aim to contribute to these discussions by turning the focus on individuals tried by the Tribunal. We discuss a very particular aspect of the ICTY proceedings: How convicts reflect on their past deeds at the time of their (early) release. We analyze how and to what extent offenders' reflections on the past crimes are considered during the President's decision-making regarding their early release and how this might affect an evaluation of the ICTY's legacy with respect to its goal of offender rehabilitation and its potential effects on reconciliation.

In addition to its core mandate of prosecuting and trying individuals accused of international crimes, on various occasions, the ICTY has expressed its aspiration not only to rehabilitate convicted offenders but also to promote reconciliation. In its sentencing judgments, offender rehabilitation is often mentioned as one of its sentencing goals, and the level of rehabilitation is one of the criteria for granting early release to individuals convicted by the Tribunal. Despite the recent statements by the ICTY President Carmel Agius that the Tribunal did not have the mandate to offer reconciliation and consequently has "not dealt with it at all,"[1] the ICTY has since its inception on multiple occasions referred to its role in reconciliation in the Yugoslav region (Clark, 2009a; cf. ICTY, 1998; *Prosecutor v. Drazen Erdemovic*, 1998, para. 21). In any case, the Tribunal has certainly constituted one of the major actors in the transitional justice and recovery process following the wars in the Former Yugoslavia. Its indictments, proceedings, verdicts, sentence pronouncements, and the (early) release of those convicted have undoubtedly affected reconciliation processes and relationships among individuals and communities on the ground, even if unintentionally, collaterally, and negatively (cf. Clark, 2012; Hayden, 2011; Meernik & Guerrero, 2014).

Rehabilitation ultimately aims to reintegrate the convict in society and to enable him "to socially function in a way that is acceptable to both himself/herself and society" (van Kalmthout & Durnescu, 2008, p. 28). As we already touched upon in our previous work (Hola & van Wijk, 2016; Kelder, Hola, & van Wijk, 2014), in the context of international crimes and international criminal courts, this might, however, lead to a rather paradoxical scenario. If a society, to which a convict is released, still endorses and justifies the past violence, his reintegration prospects "to socially function in an acceptable way" after being released from a foreign prison might be much better, if he does *not* acknowledge having committed any crimes, nor shows any remorse. Also, as Anderson (2017, p. 230) argues, narratives of denial may even be psychologically functional as this allows perpetrators to maintain positive self-identities; it can protect the self from threats, increase self-esteem, decrease depression, improve physical health, and ease social relationships. Reconciliation between former adversaries, on the other hand, can arguably only meaningfully start once perpetrators accept their role in the commission of crimes, demonstrate remorse, and even sincerely apologize for their deeds. Denying ones' crimes or—even worse—justifying the past behavior or stating that one would act the same in similar circumstances may outrage victim groups, tear open old wounds, and possibly create instability in an already fragile region. It is difficult to conceive true reconciliation if perpetrators continue to deny any responsibility, justify the past crimes, and offer no regret.

The above presents an obvious paradox. For successful reintegration it may, for some offenders, be best *not* to acknowledge any crimes or show remorse; for reconciliatory purposes, it is best if they do. The question remains how offenders and judges at the ICTY have over the past years in actual practice dealt with issues of acknowledgement and remorse. To what extent, for example, does the President in early release decisions take into account the counterintuitive thesis that (continued)

denial of responsibility may be beneficial for offenders and their return back home to their communities? How and to what extent does the President differentiate between acceptance of responsibility on the one hand and remorse on the other?

Based on all publicly available ICTY early release decisions as of May 31, 2017, this article empirically analyzes, systematizes, and evaluates (i) to what extent and how ICTY (ex)-prisoners have reflected upon their crimes and (ii) to what extent and how these reflections affected the decision-making of the ICTY President on their early release. We discuss these findings in light of the rehabilitative goals of the Tribunal and its (potential) role in reconciliation processes in the Former Yugoslavia. As a basis for our empirical analysis of early release decisions, the article first develops an analytical framework. In order to do that, the next section outlines theoretical distinctions between cognitive and emotional forms of offender's reflection on the crimes (i.e., "acknowledgement of responsibility" and "remorse"), and between its general and individual/personal dimension. Based on existing scholarship, it discusses relevance of acceptance of responsibility and remorse for the assessment of offender rehabilitation and for individual and community reconciliation processes. Thereafter, methodology, including its limitations is discussed. The article then presents the results of our explorative analysis of the ICTY early release decisions, which are situated in broader discussions of the ICTY legacy when it comes to offender rehabilitation and its effects on reconciliation processes.

Rehabilitation, Reconciliation and Offender's Reflection on Crime: Acknowledgement of Responsibility and Remorse

Offenders can look back at the past and reflect on the crimes they have been convicted of in many different forms and ways. Conceptually, one can differentiate between two forms of reflection: acceptance of responsibility and remorse. Furthermore, in case of international crimes, both forms can take on two different levels: general and personal. This section discusses the different forms and levels of offenders' reflection on their crimes and how they in theory relate to offender rehabilitation and (individual and societal) reconciliation.

Acknowledgement of Responsibility

Acknowledgement (acceptance) of responsibility is a cognitive rather than emotional form of reflection on the past.[2] Ware and Mann (2012) define the acceptance of responsibility as "giving a detailed and precise disclosure of events which avoids external attributions of cause and matches the official (. . .) account of the offence" (p. 281). In its most pure form, it means that the offender acknowledges that an offense took place, that he is responsible for the offense, and there is an absence of denial, minimization, justifications, and excuses. Therefore, responsibility would be fully acknowledged by an offender stating "I did it—all of it, exactly how the official records said I did it" (Ware & Mann, 2012, p. 281).

Offender rehabilitation is on the most general level defined as a process of change toward specified objectives (Hola & van Wijk, 2016). Depending on "the model of change" underlying a particular rehabilitation program and its goals, acceptance of responsibility by an offender can be seen as an aim of successful rehabilitation or as a precondition for a meaningful participation in a rehabilitation treatment (Bullock & Condry, 2013; Theriot, 2006). We have argued elsewhere for including acknowledgement of one's responsibility as one of the rehabilitation goals in case of perpetrators of international crimes to promote offender's moral reform and social rehabilitation between perpetrators and victims in postconflict societies (Hola & van Wijk, 2016). Also, in case of domestic/ordinary crimes, a large variety of cognitive behavioral programs aim at engaging "offenders [. . .] as moral actors with the capacity both to re-evaluate the past (anti-social) choices

and to make superior, pro-social choices in the future" (Robinson & Crow, 2013, p. 121). These programs take as a point of departure that the offender has done wrong and encourage him to denunciate past acts, think ethically, and develop victim empathy. Such interventions evolve around themes of personal responsibility, choice, and recognition of moral implications of those choices. They typically converge in their attempts to engage offenders in a "moral discourse," which not only encourages the acknowledgement of wrongdoing but also seeks to instill in offenders a new consciousness of their behavior including awareness of its impact on others (Dignan, 2005). Whether or not acceptance of responsibility should be included as one of the goals of penitentiary rehabilitation is, however, contested. In their article discussing rehabilitation of sexual offenders, Ware and Mann (2012), for example, question the relevance and necessity of acceptance of responsibility as one of the goals of offender rehabilitation. They argue, among others, that there is a lack of consistent reliable evidence indicating that denial and minimizations increase recidivism risks. In case of perpetrators of international crimes, there is another consideration, which creates an obvious paradox when it comes to rehabilitation of international prisoners and their acknowledgement of responsibility. Rehabilitation as the process of change ultimately aims to reintegrate the convict in society and to enable him "to socially function in a way that is acceptable to both himself/herself and society" (van Kalmthout & Durnescu, 2008, p. 28). Generally speaking, acknowledgement of the past wrong behavior and expression of remorse are beneficial for reintegration in society and can be considered signs of offender's preparedness to socially function in an acceptable way. However, this may be different in the context of international crimes and international criminal courts (Hola & van Wijk, 2016; Kelder et al., 2014). A convicted war criminal, who upon release by an international tribunal, plans to return to his country, where a society still endorses ideology and animosities, which fueled the war, may actually have an interest in denying having committed any crimes. Indeed, in a deeply divided postconflict setting such as the Former Yugoslavia, it may, from the perspective of convict's future reintegration, be beneficial *not* to acknowledge having committed any crimes, let alone to show any remorse.

Acknowledgement of responsibility by perpetrators, however, is regarded to be an important starting point to come to individual, interpersonal but also broader intercommunity reconciliation. Reconciliation, similar to rehabilitation, is a contested concept with many different definitions and meanings. We are not going to discuss different conceptualizations of reconciliation here. Neither will we discuss the fact that there generally is a lack of empirical evidence and substantiation for understanding what reconciled societies look like, how reconciliation works, and whether it can actually ever be achieved following atrocities. For the purposes of this article, reconciliation is understood as a relational concept, which is dynamic and fluid denoting different degrees of peaceful cohabitation, and of mutual acceptance of former perpetrators, victims, and their communities. In this respect, acknowledgement of responsibility by a perpetrator arguably forms a basis for any meaningful interpersonal and community reconciliation process as it can promote mutual acceptance of victims and perpetrators, forgiveness, and help in building mutual tolerance or even trust.[3] As Alex Boraine, former Co-chair of the South African Truth and Reconciliation Commission, famously testified during the ICTY sentencing hearing of Biljana Plavsic.

> In my experience, accepting responsibility for terrible crimes can have a transformative and traumatic impact on the perpetrator, but also on the victims and the wider community. Such acceptance, whether by a guilty plea in a criminal case or in some other forum, can, I believe, be a significant factor in promoting reconciliation and creating what I would call space for new attitudes and new behavior. It has that potential. I'm not saying it's always realized. (*Prosecutor v. Biljana Plavsic*, 2002, p. 591)

As will be discussed in the next paragraph, acceptance of responsibility is, however, considered to be just one and certainly not sufficient precondition of any reconciliation process. When complemented with (sincere and credible) remorse (and apology), this is generally believed to have an even more positive impact.[4]

Remorse

Remorse is a difficult to define and highly contested concept. In the context of this article, we will use the definition as suggested by Proeve and Tudor (2010, p. 61):

> Remorse may be defined as a distressing emotion that arises from acceptance of personal responsibility for an act of harm against another person. Often, with further reflection, the remorseful individual may desire that the act had never occurred at all and wish to make restitution toward the victim.

Consequently, whereas acceptance of responsibility is a cognitive response to attributed criminal behavior, remorse can be defined as the subsequent emotional—typically apologizing or emphatic—reflection. Similar to acceptance of responsibility, the relevance and necessity of demonstrating remorse for purposes of rehabilitation is debated. Various empirical studies in national systems have shown that remorse plays an important role in observers' judgments of defendants. A person considered to be remorseful is perceived to be less likely to recidivate and to have a higher potential for rehabilitation (Kleinke, Wallis, & Stalder, 1992; Proeve & Howells, 2006; Zhong et al., 2014).[5] Yet Bagaric and Amarasekara (2001), among others, argue that there is no empirical evidence to support a correlation between remorse and decreased recidivism. There are various authors who suggest that demonstration of remorse is beneficial for reconciliation. Holmgren (1993) and Enright (1996), for example, claim that without acknowledgement, repentance, and accountability, there cannot be any forgiveness in transitional justice. Referring specifically to gross human rights violations committed during an authoritarian state violence, Payne (2008) argues that public confessions are important for democracy and that remorseful perpetrators may stir up public debates about the past in their societies. This could in turn trigger healthy democratic processes of political participation, freedom of expression, and the contestation of political ideas. Harmon and Gaynor (2007) argue that remorse expressed during an international criminal trial may be positively received by victims and consequently lead to an improvement of community and individual relations (cf. also Bibas & Bierschbach, 2004). However, at the international criminal tribunals, expressions of remorse by defendants had often been preceded by plea bargains, which resulted in dismissed charges and reduced sentences. On many occasions, victims were reported to be disappointed with extremely lenient sentences (cf. Combs, 2003; Stover, 2005). Such feelings of disappointment, victims' suspicion of purely strategic motivations on the part of a perpetrator, and not seeing justice done might counter any possible beneficial effects of "remorseful perpetrators" on any reconciliation processes (Clark, 2009b).

Indeed, another major challenge, which is intrinsically linked to assessment of any expression of remorse, is that there are practical difficulties to accurately discern remorse in human expression. Illustrative in this regard are the statements by a U.S. judge, interviewed by Zhong et al. (2014, p. 43), who given the complexity of assessing remorse opposed the incorporation of remorse in judicial decision-making:

> [Assessment of remorse] is very difficult, especially for judges who are just seeing bits and slices when the person appears in these very formalized, stylized settings. For judges to think, sitting up on the bench, that they can really figure out whether this guy is remorseful, is remorseful enough, and is it real, it is the height of arrogance.

Irrespective of these difficulties, judges in many domestic jurisdictions, but also at the international courts, do accept remorse as a mitigating factor in sentencing or use it in evaluation of offender's level of rehabilitation (Bagaric & Amarasekara, 2001; D'Ascoli, 2011).

General Versus Personal Acknowledgement and Remorse

The previous section has demonstrated that acknowledgement of responsibility and remorse can be seen as two different, though at times interlinked, forms of how an offender can reflect on the crimes. For the purposes of this study, we would refer to these different types of reflection as, respectively, "cognitive" and "emotional." In practice, these two are not necessarily correlated and it is, for example, perfectly conceivable that an offender acknowledges his responsibility but does not feel remorseful. In case of conventional crimes, it is however much more difficult to conceive of an individual who is remorseful, without acknowledging his individual crimes and his responsibility. However, this might not be as straightforward with respect to international crimes. International crimes are examples of a large-scale, systematic criminality, often perpetrated within a specific context of societal upheavals, identity-based conflicts or wars. They are characterized by a multiplicity of offenders, a multiplicity of victims, and a multiplicity of crimes, typically committed during large-scale violent campaigns. Individual criminal acts, for which offenders can be prosecuted before a court of law, thus often constitute a tiny fraction of the overall harm caused by a widespread campaign of violence. Consequently, in case of international crimes, it is conceivable that an offender may "in general" acknowledge an overall harm or that crimes were committed, but not acknowledge personally being responsible. He may also in general express regret and feeling sorry for crimes committed in times of war or suffering of victims but not specifically share his sentiments regarding the crimes he himself is convicted of. This difference has also been noted by the panel of judges of the International Criminal Court in their decision on sentence review of Germain Katanga. When discussing Katanga's dissociation from crimes, judges referred to the fact that there is a difference between a person expressing opposition to a particular criminal act in the abstract and a person accepting responsibility and expressing remorse for having (personally) committed those criminal acts (*Prosecutor v. Germain Katanga*, 2015, p. 20). In the *Lubanga* decision, the panel held that Lubanga had expressed remorse for the general situation of unrest that existed in his community and that he clearly expressed his general opposition to a crime of conscripting, enlisting, and using children to participate actively in hostilities. Yet the panel continued, Lubanga

> did not acknowledge his own culpability for conscripting and enlisting children under the age of fifteen years old and using them to participate actively in hostilities or express remorse or regret to the victims of the crimes *for which he was convicted*.

Because of this, the panel considered that this indicates that Lubanga had not genuinely dissociated from his crimes (*Prosecutor v. Thomas Lubanga Dyilo*, 2015, pp. 20–21).

Analytical Framework: Reflection on Crimes Continuum

For the purposes of our analysis of ICTY early release decisions, we have developed an analytical framework distinguishing nine prototypes of prisoners based on different forms and levels of their reflection on the past crime. As we argued above, a convict's reflection on his crimes can be (i) cognitive and/or emotional and (ii) general and/or personal. In practice, arguably, reflections on crime come in different degrees and shades. It is to be expected that there exists a continuum when it comes to the convicts' reflection, whereby some fully accept responsibility and generously express

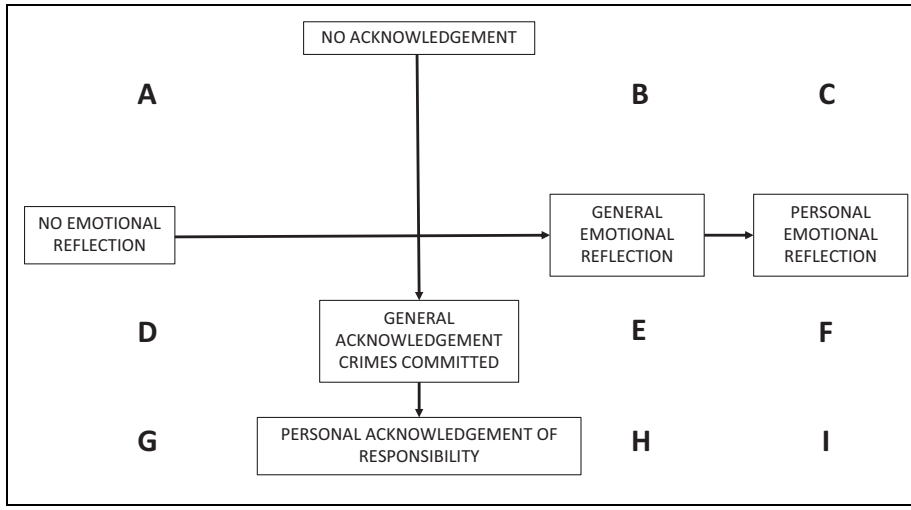

Figure 1. Reflection on crimes continuum.

remorse for their personal role, others only partially do so, and others not at all. Schematically, this "reflection on crimes continuum" can be depicted as illustrated in Figure 1.

The vertical line of the continuum depicts the "cognitive axis" and represents the extent to which the offender accepts responsibility. The horizontal line depicts the "emotional axis" and represents the extent to which the convict regrets having committed crimes and expresses remorse. Ideally, in order to rehabilitate the offender and promote reconciliation between offender and victim(s) and their communities, the offender either during the trial phase or in the early release request (1) publicly accepts (acknowledges) responsibility for the crimes (s)he is tried and convicted for and (2) publicly expresses remorse for having committed these crimes, preferably by extending apologies to the victims of these crimes. This "ideal offender" would be represented by "the I(deal) type" in the lower right corner in Figure 1. Conversely, an offender who does not acknowledge any crimes have been committed (by his group), denies responsibility, and does not express remorse is represented by prototype "A" in the upper left corner of the continuum. Convicts "B," "D," "E," "G," and "H" all partially reflect on crimes, and/or their role in the commission of these crimes and/or the extent to which they feel sorry. Although theoretically possible, one would not expect to identify any convicts Type "C": feeling sorry for one's personal role in crimes one does not accept personal responsibility for is highly implausible. Similarly, it is highly unlikely to find any category "F" offenders who acknowledge in general that crimes have been committed, feel sorry for what they have done, but do not acknowledge personally having committed any crimes.

With regard to the prototypes, it is important to note that reality is always much more complex than theoretical models, and it might be difficult to identify any of the prototypes in practice or to "link" every convict clearly to a certain prototype. In addition, convict's perspectives and/or expressions with regard to his criminal behavior can change during the different stages of the legal process. It may, for example, be well possible that someone during trial claims to be innocent and—consequently—does not show any remorse, whereas his attitude and emotions may (have) change(d) during imprisonment. The opposite is also possible, when a defendant instrumentally with ulterior motives confesses to crimes and is perceived remorseful in order to secure sentencing discounts but subsequently publicly revokes acknowledgement and remorse. The well-documented "false remorse" of Biljana Plavsic can serve as an example of such "trajectory" (Subotic, 2012). In the

subsequent paragraphs, we will discuss where in the spectrum ICTY convicts fit and how the ICTY President in the early release phase has responded to the convicts' reflections on their past crimes or a lack thereof.

Early Release at the ICTY and Offenders' Reflection on the Past

As of May 31, 2017, the ICTY convicted 82 individuals with a final judgment. Twenty individuals pleaded guilty, and before or during trial acknowledged their responsibility for (some) crimes, they were indicted for, and (some) expressed remorse. The average sentence handed out at the ICTY is 15.6 years, and only five individuals were sentenced for life imprisonment. These are all very well-known basic statistics. What might be lesser known is the fact that the vast majority of those who were tried and convicted at the ICTY have already served their sentence and been released. Most were released before serving their full sentence. In May 2017, only 19 individuals were still serving their sentences dispersed in prisons in European countries, which agreed to enforce ICTY sentences and accept individual convicts.[6] Consequently, 57 individuals (70% of those convicted by the ICTY) have already been released.[7] In 53 cases (93% of those released), their sentence has been commuted and they were released early.[8] Despite the fact that the ICTY prisoners are serving their sentences spread in prisons around Europe, according to the ICTY Statute and its Rules of Procedure and Evidence, it is the ICTY President who decides on prisoners' eligibility for early release.[9] Four factors the President is supposed to consider are provided for in Rule 125: the gravity of crimes, the treatment of similarly situated prisoners, prisoner's demonstration of rehabilitation, and any substantial cooperation with Prosecutor. Consequently, the President evaluates the level of prisoner's rehabilitation as one of the conditions for early release. We have already discussed elsewhere that a clear conceptualization of rehabilitation of international prisoners is lacking and that many different factors, including prisoners' reflection on crimes, are taken into account by the President in different decisions without a principled approach (cf. Hola & van Wijk, 2016; Kelder et al., 2014). As the next section shows, ICTY prisoners have reflected on their crimes in many different shapes and forms, and it seems that no matter whether a convict acknowledges his responsibility, denies, or feels truly sorry, as a rule of thumb (with a couple of notable exceptions), the vast majority is early released after having served two thirds of their sentence.

Method

We have analyzed all publicly available early release decisions issued by the ICTY President as of May 31, 2017. We have included all cases in which early release has been requested and the decision was made publicly available at the ICTY Court Record database.[10] In total, we analyzed early release decisions concerning 58 individuals, who have altogether made 72 requests for early release and/or sentence remission at the ICTY. Fifty three individuals were eventually released,[11] in case of four individuals, their early release request was rejected and they are still serving their sentence,[12] one individual (Mile Mrksic) died after his early release was granted but before the actual release.

In all decisions, we identified passages discussing reflection on the past and created a basic excel spreadsheet to get an overview across all the cases.[13] In addition, we checked (i) sentencing judgments in order to see whether judges during sentencing mention defendant's reflection on the past in any way, (ii) defense sentencing submissions, and (iii) convict's and prison authorities submissions for early release, if available, to see whether and how the convicts reflected on their responsibility in their motions and whether and how prison authorities (or prison psychologists, if applicable) raise this issue. It, however, proved difficult to find defense or prison authorities submissions in the judicial record database, as these are often confidential. Our findings are thus mainly based on information provided in sentencing judgments and early release decisions. We have not interviewed

the convicts, the President nor the prison authorities. This means that our analysis is essentially based on secondary data—representations and summaries included in the early release decisions. In this respect, our data are limited to what the President decided to include in his decision. It is possible that in some cases, despite being raised in submissions, the President did not include discussion on prisoners' reflections on the past in the decision. In addition, sometimes confidential information, which arguably could have been relevant for our analysis, has been redacted from public versions of the early release decisions, as is sometimes the case with certain parts of submissions of prison authorities or prison psychologists.

Consequently, we are unable to ascertain the actual cognitive or emotional state of prisoners at the time of their application for early release nor to assess whether the representations included in the early release decisions are reflecting the reality. We cannot evaluate sincerity of acknowledgements of responsibility or of expressions of remorse and cannot exclude the possibility that statements by convicts may have been strategical in order to manipulate the procedure and secure sentencing discounts and/or early release. Notwithstanding all these shortcomings, the discussions included in the early release decisions do provide an insight into how reflection on the past varies among the prisoners and how the President factors this in during the decision-making regarding early release. It does allow us to assess whether the information provided by a prisoner, prison authorities, or discussed by the President in the early release decision indicates anything regarding cognitive or emotional reflection of the prisoner on the past crimes and how that information is used by the President for granting or rejecting an early release.

Results

Of the 53 individuals that have been early released by the ICTY before serving their full sentence, in case of 19 individuals (35%), their reflection on the past and attitude toward their crimes is *not* discussed whatsoever in the decision. It is predominantly their good behavior in prison that serves as an indicator of their sufficient level of rehabilitation and since they all had served two thirds of their sentence around the time of their early release request, they are released.

In the remaining 34 cases, reflection on the past is mentioned and assessed. Based on the available information, we categorized all the 34 prisoners according to our analytical framework based on the form (cognitive and/or emotional) and level (general or personal) of their reflection. The results are presented in Table 1. In only 10 cases (19% of those early released), we identified "the ideal prototype I" that is a prisoner acknowledging personal responsibility combined with remorse for his crimes. In an additional seven cases, prisoners acknowledged personal responsibility and either expressed regret in a more general way for suffering of victims or harm of war (three cases) or did not express any emotional reflection (four cases). Nine prisoners recognized in general terms that crimes were committed during the war but did not accept their own responsibility, minimized, or justified their actions or blamed others. Interestingly, in case of eight individuals, no acknowledgement (neither on a personal nor on a more general level) is offered at all: Three of these seem to stay in denial with no feelings of regret whatsoever, while five express feelings of remorse for suffering of victims of war and harm during the war.

In the following paragraphs, we will present the most fitting ICTY cases according to the nine prototypes. We will discuss why a prisoner is categorized as prototypical for each category and how the President evaluated this in his assessment of prisoner's level of rehabilitation and early release. As expected, we were not able to identify any cases that would fall under the Types C and F during our analysis, and therefore we do not discuss these categories. We will start with the ones depicted in the upper left corner of Figure 1 (Type A), who keep denying. We will proceed along the continuum toward more "ideal" prototypes, first discussing those depicted in the upper half of the continuum, who still do not acknowledge the crimes but at least express general regrets for the harm and

Table 1. Reflection on the Past by International Criminal Tribunal for the Former Yugoslavia Early Released Convicts.

Cognitive Reflection \ Emotional Reflection		No	Yes	
			Expression of General Remorse/Regret	Expression of Individual Remorse/Regret
No		Type A 3 (2)	Type B 5 (3)	Type C
Yes	General acknowledgement	Type D 2 (2)	Type E 7 (4)	Type F
	Personal acknowledgement	Type G 4 (1)	Type H 3 (3)	Type I 10 (3)

[a]The numbers indicate a total number of individuals included in each category. Numbers in brackets are cases out of the total number included, which are ambiguous, or information is insufficient or conflicting (as with Bala discussed below).

suffering caused by the war (Type B), moving to the lower half to those who seem to, in one way or another, acknowledge the past crimes on a general level ("crimes were committed"; Types D and E) or accept their personal responsibility for crimes and either express no regrets (Type G) or express regret on a general level (Type H). We end with the "ideal type" I, who accept their personal responsibility and claim to feel remorseful with respect to their crimes and (in-)actions.

Type A: "No Crimes Have Been Committed, I Do Not Feel Sorry"

We have not found any prisoner who would explicitly and openly keep denying any crimes being committed during the war. There are, however, examples, which are borderline. Johan Tarculovski, a former member of a security guard unit at the Macedonian Ministry of Interior, was convicted of planning, ordering, and instigating killing, destruction of property and cruel treatment during an attack on Ljuboten, a village on the Macedonian and Kosovar borders. He was sentenced to 12 years imprisonment. In his 2013 application for early release, German authorities submitted a psychological report, which notes his "lack of remorse [for] his offences" and refers to his sense that "he was convicted for others" and that he "was not the actor but the com[m]ander" (*Prosecutor v. Johan Tarculovski*, 2013, para. 20). Clearly, Tarculovski seems to be denying any wrongdoing on his part and does not express any feelings of regret. The fact that he allegedly admits wrongdoing of "others" would place him somewhere in between of the Types A and D, but the information contained in the early release decision is relatively scarce. The President concludes that he has

> demonstrated rehabilitation [based on his good behavior in prison] to the extent that he would not pose a societal threat if released, despite the absence of any evidence indicating remorse for his crimes or acknowledgement of responsibility for his deeds. (*Prosecutor v. Johan Tarculovski*, 2013, para. 23)

Tarculovski is granted early release. Similarly, during an early release procedure of Vinko Martinovic in 2011, the report submitted by Italian prison authorities stated that Martinovic "did not know the reasons for his imprisonment and ascribed it to the power of the position he held, maintaining that he was not responsible for the acts" (*Prosecutor v. Vinko Martinovic*, 2011, para. 21). However, here, in contrast to Tarculovski, Martinovic disputes the conclusions of prison authorities claiming that his "positions were not interpreted correctly because the relevant exchange was in Italian" and in his submission states that "he knows why he was incarcerated, understands the verdict of the Tribunal and accepts his punishment" (*Prosecutor v. Vinko Martinovic*, 2011, para. 21). The

President considers the assessment of Italian authorities of Martinovic's acceptance of guilt as a neutral factor in his assessment of Martinovic's rehabilitation. Based on his behavior in prison, the President concludes that he demonstrates "some" rehabilitation, which weighs in favor of his early release (*Prosecutor v. Vinko Martinovic*, 2011, para. 22). Similarly, in one of the early release procedures of Mlado Radic, French authorities submitted a rather worrying depiction of Radic's attitude to his crime. He "continues denying the facts for which he was convicted, particularly those of rape and sexual assault, and regularly makes racist remarks [. . .] and has stated his belief that 'the shelling of Sarajevo was organised by the UN so that the Serbs would be accused'" (*Prosecutor v. Mlado Radic*, 2010, para. 18). As opposed to the previous early release application,[14] the President evaluates Radic's rehabilitation as a neutral factor for the purposes of early release, expressing concerns over a lack of detail in the submissions of the French authorities. The President explicitly states, however, that acceptance of responsibility and remorse is not determinative factors of evaluating the level of rehabilitation (*Prosecutor v. Mlado Radic*, 2010, para. 21).[15]

Consequently, despite the fact that in all of the above cases, there seem to be (at least on balance of probabilities) serious concerns regarding the attitude of the prisoners toward their crimes, in each of these cases the President sweeps these concerns under the carpet and does not make any further inquiries. Prisoners are considered sufficiently rehabilitated or rehabilitation is determined to be a neutral factor for the purposes of early release. In none of these cases, the President does in any way elaborate why denial of one's responsibility is considered inconsequential for the evaluation of prisoner's level of rehabilitation.

There have, however, also been exceptional cases where denial of responsibility was one of the crucial factors in coming to a negative assessment of a prisoner's level of rehabilitation. In some, a prisoner was released nonetheless (*Prosecutor v. Haradin Bala*, 2013, para. 39), in others, the negative assessment was used to reject an early release before having served two thirds of a sentence,[16] while in at least three instances denial of responsibility blocked early release even after serving two thirds (*Prosecutor v. Dragoljub Kunarac*, 2017; *Prosecutor v. Haradin Bala*, 2013; *Prosecutor v. Mlado Radic*, 2013). In one of the most recent, and rather unprecedented, early release decisions—the decision on Dragoljub Kunarac (*Prosecutor v. Dragoljub Kunarac*, 2017)—the prisoner's denial seems to have been one of the decisive factors (next to his very questionable behavior in prison) in a negative assessment of his rehabilitation. His request for early release was rejected, despite the fact that he had already served two thirds of his sentence. Although the President at length discusses Kunarac's attitude to his crimes, large parts of this discussion are unfortunately redacted and the public version of the early release decision contains only one readable paragraph. This paragraph alone, however, is already quite telling. According to an interview conducted at Bochum prison (Germany) in 2015, Kunarac insisted "he did not commit the crimes of which he was convicted and that 'he was shocked' at the allegations of rape that were made against him 'since that was not true'" (*Prosecutor v. Dragoljub Kunarac*, 2017, para. 37). He stated "a woman climbed on top of him, overpowered him and had vaginal intercourse with him. He just lay there and didn't move [. . .]. Actually he was the one who was raped" (*Prosecutor v. Dragoljub Kunarac*, 2017, para. 37). These are pretty shocking statements considering Kunarac's convictions for multiple instances of sexual violence and enslavement of women and young girls during the war. The President considers Kunarac's denial, together with the fact that he has been "a demanding prisoner" and "has not used his time in prison in a fully positive manner" (*Prosecutor v. Dragoljub Kunarac*, 2017, para. 54), as evidence to conclude that Kunarac "has not demonstrated sufficient signs of rehabilitation at this stage" and "that this factor weighs against his early release" (*Prosecutor v. Dragoljub Kunarac*, 2017, para. 55). He proposes "other rehabilitation measures might benefit Kunarac" and reiterates that this rejection does not preclude future applications for early release "in particular should Kunarac consider that changed

circumstances suggest that he has demonstrated sufficient signs of rehabilitation" (*Prosecutor v. Dragoljub Kunarac*, 2017, paras. 69–70).

Type B: "No Crimes Have Been Committed, But I Feel Sorry for the Overall Suffering"

Veselin Sljivancanin, a former general in the Yugoslavian army, was convicted of torture as a war crime based on his ommission as a commander to execute his responsibilities and intervene in mistreatment of prisoners of war at the Ovcara farm. Immediately after the final verdict, he applied for early release, which was granted. In his application, he expressed "remorse for the terrible events which took place not only in Vukovar but all over the territory of the former Yugoslavia" (*Prosecutor v. Veselin Sljivancanin*, 2011, para. 26). In doing so, Sljivancanin notes that he is generally sorry for what happened during the conflict in his home country but does not acknowledge crimes nor reflects upon his personal actions, omissions, and resulting harm. The President offers a nuanced assessment of Sljivancanin's reflection on the past:

> Mr. Sljivancanin expresses sympathy for the victims of the conflict in the former Yugoslavia, and in Vukovar in particular, but does not express remorse for his own crimes, as he does not link the fate of the victims to his own actions. (*Prosecutor v. Veselin Sljivancanin*, 2011, para. 26)

However, the President does not seem to draw any implications from this. Taking into account his good behavior in detention the President concludes that Sljivancanin has demonstrated "some signs of rehabilitation" which favor his early release (*Prosecutor v. Veselin Sljivancanin*, 2011, paras. 27, 31).

Type D: "Crimes Were Committed But I Am Not Sorry"

Zdravko Mucic, a former commander of the Celebici camp, comes closest to a perpetrator who generally acknowledges that crimes were committed but does not reflect on his own criminal acts and responsibilities. Mucic was held responsible for maintaining inhumane conditions for Bosnian Serb detainees and for creating an atmosphere of terror, in which detainees lived in a constant state of anguish and fear of being subjected to physical abuse (*Prosecutor v. Delalic* et al., 1998). During trial, he was reprimanded for his behavior and intimidation of witnesses. Judges noted that his behavior suggested that he "appears to have regarded this trial as a farce and an expensive joke" (*Prosecutor v. Delalic* et al., 1998, para. 1251). In 2003, immediately after his second appeal was decided, Mucic applied for early release. In the early release decision, the President refers to his interview with Mucic during which he allegedly changed his attitude and "acknowledged that the conditions at the Celebici prison camp were appalling and expressed his respect for, and his gratitude to, the Bench and the judicial process" (*Prosecutor v. Zdravko Mucic*, 2003, p. 2). In this decision, Mucic is granted release by the President emphasizing his "good physical and mental condition, irreproachable behavior in prison, attachment to his family and a possibility to exercise his profession after release" (*Prosecutor v. Zdravko Mucic*, 2003, p. 2). Consequently, according to the President's summary, Mucic seems to acknowledge depravity of conditions in the detention camp he was commanding, however, does not reflect upon his role or his actions and/or omissions nor accepts his personal responsibility. In this respect, as opposed to the decision in Sljivancanin, the President does not seem to distinguish between the general and personal level of acknowledgement and the fact that Mucic did not reflect on his personal role in the appalling conditions of the detention camp. Similarly to Sljivancanin, however, Mucic was released nonetheless.[17]

Type E: "Crimes Were Committed and I Am Sorry for the Overall Suffering"

Mlado Radic, a professional policeman and a former shift leader in the Omarska detention camp, was sentenced to 20 years of imprisonment for his role in the camp and personal mistreatment of detainees. Among others, he was convicted of rape and sexual violence (*Prosecutor v. Kvocka* et al., 2001). During his incarceration, he applied for early release 3 times and his reflection on crimes underwent very peculiar changes. Radic in essence moved from a fervent denier of his crimes[18] to an individual, who according to his letter to the President cryptically claims to be "aware of his sentence, the crimes for which he has been convicted and that he finds it difficult to come to terms with the fact that many people [. . .] suffered torture, such as abuse, harassment, mistreatment, belittling, etc." (*Prosecutor v. Mlado Radic*, 2013, para. 25). Radic further writes "he finds it particularly difficult *if* [Italics, authors] he contributed to such crimes through his presence, he is prepared to apologise to each and everyone and to express my sincerest remorse for everything" (*Prosecutor v. Mlado Radic*, 2013, para. 25). According to his lawyer, "Radic has shown a sufficient level of regret for the victims of the war in the former Yugoslavia" (*Prosecutor v. Mlado Radic*, 2013, para. 24). Careful reading of his statements however suggests that Radic's "expression of sufficient regret and acknowledgement of crimes" remain on a very general level ("victims of war," "many people suffered torture") and the formulations used by Radic ("*if* I contributed to such crimes") still verge on a denial. It is surprising, to say the least, that his attitude has undergone such a profound change from outright denial in 2007 to at least partial, general and rather superficial acknowledgement and regret in 2010. The President is also not convinced and adopts a relatively cautious approach to evaluating the submitted information. He notes Radic's difficulties to adjust to life in a foreign prison and that the only "little to no evidence" of his rehabilitation is "[Radic's] response to the materials provided to him, in which he expresses his regret for the suffering of the victims" (*Prosecutor v. Mlado Radic*, 2013, para. 26). The President concludes that the level of rehabilitation is to be a neutral factor in the assessment of eligibility for early release. He decides that since "the only factor that weighs in favour of granting the Request is the fact that Radic served two thirds of his sentence as of 9 August 2011" to grant an early release, but only effective from December 31, 2012 (*Prosecutor v. Mlado Radic*, 2013, para. 30). Consequently, Radic's case is one of the few at the ICTY[19] where prisoner's request for an early release is denied after serving two thirds of a sentence. Despite the fact that his level of rehabilitation is assessed to be a neutral factor in this conclusion, it seems that the questionable evidence regarding his rehabilitation had played a defining role in this decision.[20]

Another interesting illustration that fits this category of general acknowledgement and remorse is the notorious case of Drazen Erdemovic who was the first ICTY defendant who came forward, surrendered, and pleaded guilty. In a statement during his sentencing hearing, he expressed regret on a general level:

> I feel sorry for all the victims, not only for the ones who were killed then at that farm, I feel sorry for all the victims in the former Bosnia and Herzegovina regardless of their nationality. I have lost many very good friends of all nationalities only because of that war, and I am convinced that all of them, all of my friends, were not in favour of a war. I am convinced of that. But simply they had no other choice. This war came and there was no way out. The same happened to me. (*Prosecutor v. Drazen Erdemovic*, 1996)

Erdemovic was in the end sentenced to 5 years and shortly thereafter released early. In the early release decision, the President referred to "recognition of his crimes, their gravity and consequences and his repeated expression of contrition" (*Prosecutor v. Drazen Erdemovic*, 2008, p. 2). According to the President, "Erdemovic has thereby demonstrated that he is rehabilitated to the extent possible" (*Prosecutor v. Drazen Erdemovic*, 2008, p. 2).

Type G: "I Accept I Have Committed Crimes, But I Am Not Sorry"

The case of Ljubomir Borovcanin comes closest to an offender who accepts his own responsibility for the crimes without offering any regrets. However, in this case, a distinction between a personal acknowledgement (I have done wrong) and a general acknowledgement (what happened during the war was wrong) is still somehow blurred. Borovcanin, convicted of crimes against humanity and war crimes based on his participation in the Srebrenica massacre, applied for early release in 2016. According to a prison officer, who has been his contact person in prison, he has "admitted everything he has been charged with, and he has accepted his punishment for it" and "has no doubt whatsoever that what happened during the war was wrong" (*Prosecutor v. Ljubomir Borovcanin*, 2016, para. 22). In his own submission, and this complicates matters slightly, Borovcanin claims that he "publicly acknowledged that he 'did not do enough' and that he recognizes the gravity of the crimes and his role in them." Borovcanin asserts that he chose not to appeal his convictions or the sentence imposed upon him, which further reflects an acceptance of those findings (*Prosecutor v. Ljubomir Borovcanin*, 2016, para. 23). In this case, it seems that Borovcanin indeed acknowledged his crimes and his responsibility for them and on a cognitive level accepts that what happened during the war (at least on a general level) was wrong. He, however, does not express any feelings of remorse, being sorry or regret. Nonetheless, referring to Borovcanin's exemplary behavior during his imprisonment, this according to the President demonstrates "consistent and sustained signs of rehabilitation" and Borovcanin is released (*Prosecutor v. Ljubomir Borovcanin*, 2016, para. 25).

Type H: "I Accept I Have Committed Crimes and I Am Sorry for the Overall Suffering"

It proved to be relatively difficult to find a defendant who could act as an illustration of prototype H. Dragoljub Ojdanic would probably come the closest but given the scarcity of the publicly available information, it is difficult to make any conclusive claims. In his application, for early release, Ojdanic submits that he recognizes the gravity of the crimes he was convicted of. He however refers to "his limited role and mens rea" pointing to the fact that in contrast to his co-accused "he was not convicted as a member of a joint criminal enterprise, nor of the most serious crimes charged in the indictment, such as murder and persecution" (*Prosecutor v. Dragoljub Ojdanic*, 2013, para. 17).

He asserted that his rehabilitation is demonstrated "through the withdrawal of his appeal and his expression of regret to the victims" (*Prosecutor v. Dragoljub Ojdanic*, 2013, para. 17). However, it is not clear how, when, and in what way Ojdanic expressed his regrets. The President accepts all these as "positive indicators" of his rehabilitation and grants him early release (*Prosecutor v. Dragoljub Ojdanic*, 2013, para. 19).

Type I: "I Accept I Have Committed Crimes and I Am Sorry for the Suffering I Have Caused"

We classified 10 individuals as falling under the ideal type. Seven of these expressed personal remorse already during their trial and/or pleaded guilty.[21] In this sense, the vast majority seems to have been repentant already during the trial and their incarceration did not seem to have any impact on their attitude.[22] Therefore, one might argue that at least when it comes to their attitude toward their acts these defendants were already "sufficiently rehabilitated" during their trial. The conviction or imprisonment as such seems to have not impacted or changed their perspectives on their role in the commission of crimes. We use one case to illustrate "the ideal type." Milan Simic, the former President of the municipal assembly of Bosanski Samac, pleaded guilty and expressed his regret

during his trial in very straightforward and clear words, acknowledging his responsibility, not blaming circumstances or context. He also extended apologies to the victims stating:

> I would like to express my sincere regret and remorse for what I have done to my fellow citizens and friends at the elementary school. I'm aware of the fact that the fact that my best friend was killed and the fact that I was drunk can in no way serve as a justification for what I have done there. [. . .] [A]lthough it was immediately clear to me that it was impossible to make up for what I have done, my conscience led me to at least extend my apologies to the people whom I had hurt. I have done that, but in addition to my sincere regret and remorse and personal apology that I extended to them, I was still haunted by guilt and it continues so until this day. (*Prosecutor v. Milan Simic*, 2002)

His acceptance of responsibility and remorse were accepted as mitigating factors in sentencing by the judges and also mentioned by the President while granting him early release (*Prosecutor v. Milan Simic*, 2003). The President did not specifically evaluate Simic's level of rehabilitation but concludes that he "is no less appropriate for a grant of early release than that of other prisoners previously granted early release" (*Prosecutor v. Milan Simic*, 2003, p. 2).

Fundamental Challenges in Assessing Prisoners' Level of Rehabilitation

The above paragraphs demonstrate that the ICTY prisoners have reflected on their past crimes in many different shapes and forms. In some decisions, this reflection is extensively discussed as part of the evaluation of a prisoner's level of rehabilitation for the purposes of his early release, in most decisions shortly, or not at all. In this respect, there are fundamental problems in the current system of assessing the prisoners' level of rehabilitation and their reflection on their past deeds at the ICTY. Whether or not reflection on the past is included in the discussion largely depends on whether it is raised in any of the documents submitted by prison authorities of an enforcement state or by a prisoner himself for the President's considerations.[23] If there is no information included in this respect, the President does not inquire any further and relies solely on, for example, reports concerning good behavior in prison to assess the level of rehabilitation. Only if any of the parties submits any information regarding prisoner's attitudes toward his crimes, the President includes it in his decision-making.

Consequently, in evaluating a prisoner's attitude toward his crimes and convictions during his imprisonment, the President relies on statements and evaluations submitted either by prison psychologists[24] or by national prison authorities. The President is, therefore, entirely dependent on their interpretations, which are sometimes very brief, matter-of-factly, one-sentence statements with no substantiation provided. For example, in case of Drago Josipovic, Spanish prison authorities submitted that despite difficulties to adjusting to prison environment and not speaking Spanish

> his behavior, attitude and demonstration of the acceptance of responsibility stemming from the crimes committed may be considered sufficient to grant him advancement to a higher grade of treatment and the serving of the rest of his sentence in his own country. (*Prosecutor v. Drago Josipovic*, 2006, para. 10).

The President in his considerations of these submissions does not elaborate on Josipovic's reflection on the past any further. He is not curious how the Spanish prison officials established that Josipovic indeed accepted his responsibility despite the language barriers, nor questions the fact that Josipovic is not going "to advance to a higher grade of treatment" nor "serve the rest of his sentence in his own country" but will be released and the rest of his sentence will be pardoned (*Prosecutor v. Drago Josipovic*, 2006, para. 10).[25]

In some cases, however, language barriers, misinterpretation, and misunderstandings are raised by a prisoner to dispute a negative assessment of his attitude to crimes submitted by prison authorities. In a number of cases, prison authorities raised concerns about the fact that a prisoner stays in denial and does not accept his responsibility. Some prisoners contest such conclusions due to misinterpretation and misunderstandings based on language and cultural barriers (cf. *Prosecutor v. Dragan Zelenovic*, 2010; *Prosecutor v. Ivica Rajic*, 2011; *Prosecutor v. Mladen Naletilic*, 2013; *Prosecutor v. Radomir Kovac*, 2013; *Prosecutor v. Vinko Martinovic*, 2011). It is notable that in such cases the President seems to be reluctant to draw any negative consequences from these discrepancies or only notes the concerns and considers the prisoner's attitude to be a neutral factor in evaluating his level of rehabilitation. Haradin Bala, for example, applied for early release twice: in 2010 and again in 2011. In the first application, when Bala had not yet served two thirds of his sentence, the President, upon submissions of the French prison authorities, extensively discusses his attitude toward his deeds. He quotes conclusions of a prison psychologist that

> Mr. Bala has resorted to denial. He does not assume responsibility for his actions. He denies any involvement in the deeds for which he was charged. However, he accepts the sentence in an extremely self-effacing manner. He chalks this up to "politics," as though it were a manner of sacrificing some few for the sake of the higher cause of peace? [. . .] the risk of recidivism continues to be present. Denial does not allow him to develop new thought patterns. (*Prosecutor v. Haradin Bala*, 2010, para. 19).

Bala disputes the conclusions claiming miscommunication and unfamiliarity of the psychologist with the Kosovo Albanian language and culture, and the crimes he has committed (*Prosecutor v. Haradin Bala*, 2010, para. 22). The President resolves this dispute in a very peculiar way. He questions, in a very vague language, the reliability of the conclusions of the psychological report, "which appear to be general observations that are not based upon specific information and reactions obtained from Mr. Bala during his interview with the psychologist" (*Prosecutor v. Haradin Bala*, 2010, para. 24). The President does not inquire further and does not ask for clarification or additional psychological assessment. Instead, the President concludes that since Bala had shown good behavior during imprisonment and willingness to learn French, he has demonstrated some—but very limited—signs of rehabilitation. At that time, Bala's application for sentence remission was rejected. Interestingly, however, it appears that although according to the French Authorities Bala's attitude toward his deeds had not changed, Bala was early released in 2012, 1 year after having served two thirds of his sentence. The President weighing the totality of circumstances grants an early release while ordering one extra year in prison "to assuage my colleagues' concerns over Bala's lack of rehabilitation" (*Prosecutor v. Haradin Bala*, 2013, para. 39).

These and similar cases illustrate a fundamental problem inherent in the ICTY system of enforcement of sentences and assessment of rehabilitation. ICTY prisoners coming from the Former Yugoslav countries convicted of international crimes are dispersed in prisons across Europe, integrated in domestic prison populations and their rehabilitation and psychological state is being evaluated, if at all, in local languages according to local standard operating procedures (Hola & van Wijk, 2014). In such an enforcement system, it is not surprising that misunderstandings arise. What is more surprising is that such problems are not raised more often. Only in some decisions, in particular in cases of disagreements or negative assessments by prison authorities, convicts explicitly addressed these cultural and language-related challenges. In some cases, these challenges are noted by prison authorities themselves in their submissions on prisoner's rehabilitation. The President, however, seems to have been taking a rather hands-off approach in this respect.

Conclusion

In this article, we focused on a very particular aspect of the ICTY functioning: How ICTY convicts reflect on the past and how their attitude toward the crimes is considered during the President's decision-making regarding their early release. In order to do so, we have developed an analytical framework based on different forms and levels of possible reflection on the past crimes and analyzed all publicly available early release decisions of the ICTY as of May 31, 2017. We argued that the way how prisoners reflect on their past crimes and how that is considered in assessing their eligibility for early release might be relevant in assessing the ICTY's legacy with respect to its goals of offender rehabilitation but also to its potential effects on reconciliation in the Former Yugoslavia.

Our analysis demonstrates that there has been a large variety of the ways and manners, in which prisoners reflect on the past, and no systematic, consistent approach in taking prisoner's attitude toward their crimes as part of the evaluation of his level of rehabilitation at the ICTY. In 36% of all the early released individuals, the ICTY President does not in any way assess the convict's attitude toward the crimes. Consequently, more than one third of the ICTY convicts are considered rehabilitated and early released from prison without any information regarding their outlook on their convictions, crimes, or responsibility. Whether or not reflection on the past is included in an early release decision and taken into account when assessing a prisoner's rehabilitation is largely dependent on the fact whether prison authorities of an enforcement state or a prisoner himself raise it in any of documents submitted for the President's consideration. This demonstrates the ad hoc character of assessments of prisoners' rehabilitation at the ICTY (cf. Hola & van Wijk, 2016; Kelder et al., 2014).

In 64% of cases (34 individuals) in which a prisoner's reflection on the past is discussed during an early release procedure, the ICTY President relies on statements provided by third parties such as local prison psychologists, prison wardens, or convicts themselves. These submissions are often conflicting or unsubstantiated. In none of these cases, however, further inquiries, interviews, assessments, or requests for additional information or corroboration appear to have been done. Consequently, the evaluation of prisoners' reflections on their crimes and its relevance for assessment of rehabilitation by the President seems to be rather matter-of-factly, superficial, and sweeping. The analytical framework we developed distinguishes nine prototypes of prisoners based on different forms and levels of their reflection on past crimes. Of the 34 cases of early release in which a prisoner's reflection on the past is discussed, only 10 prisoners (19% of the total number of early released) fit the ideal type. They appear to have acknowledged personal responsibility and expressed remorse for the crimes they committed. Others denied, only partially accepted responsibility and/or showed remorse on a general level. Whether or not, and the way in which, prisoners reflect on their crimes often proves inconsequential for the assessment of the level of rehabilitation and thus, for being early released or not. In the vast majority of cases, with only a couple of notable exceptions, the President seems to automatically grant an early release once "the magical threshold" of two thirds of a sentence served is reached. In line with what we argued elsewhere (Hola & van Wijk, 2016), we suggest that for the development of a more principled system of early release and assessment of rehabilitation of perpetrators of international crimes, decision-makers should consistently include evaluations of a prisoner's attitude toward his crime. In this respect, it is also important to acknowledge that there is a difference between cognitive (accepting responsibility, acknowledgement) and emotional reflection (remorse) and their general and personal dimensions.

Our analysis confirms that the Tribunal has not developed a clear and consistent conceptualization of what rehabilitation of perpetrators of international crimes entails and how to assess it. The ICTY does not require its convicts to reflect on the past (publicly), accept their responsibility, and acknowledge criminality of their acts to be considered sufficiently rehabilitated. It seems to be enough that they behave (relatively) well in prison and above all, have served two thirds of their sentence. Whether or not they deny their past deeds or acknowledge the wrongfulness of their

actions does not seem to matter. If raised at all, it is discussed in a very superficial and ad hoc way. The ICTY President does not in any way problematize that the future reintegration of a convict in the context of the Former Yugoslavia may actually be facilitated by denying the past crimes given the social realities on the ground. If successful reintegration of convicts in society is one of the rehabilitation goals, this consideration should be at least discussed and acknowledged. On the other hand, we understand that it might be difficult to justify on a normative and institutional level that rehabilitated war criminals, given their reintegration prospects, should deny their crimes to smoothen their return back home. More empirical, theoretical and policy-related research is needed to address this obvious paradox.

Similarly, if and how the ICTY practice of early release affects reconciliation processes between victims and perpetrators and their communities in the countries of the Former Yugoslavia remains to be seen and should be further assessed. Due to the generous early release policies, the actual sentences convicts serve before their release are in practice even shorter than the ones handed out on trial. As we briefly touched upon above, victims already feel disappointed by the leniency of the ICTY sentences. Many convicts are released early without being required to reflect on their past deeds and their criminal nature. This in turn might lead to further frustrations and disappointment among victims' communities and hinder any reconciliation. There have been reported instances of the ICTY convicts, who were considered sufficiently rehabilitated, early released, and after returning back kept on justifying their past acts. In some cases, these publicly expressed attitudes might be completely opposite or at least much more nuanced appreciation of their past deeds than the ones presented by the convicts to the Tribunal. In evaluating the ICTY legacies, other articles included in this special issue serve as a very important reminder of the limitations of the Tribunal's legally constrained reality, which might be very different from social realities on the ground. Much more empirical research on life after trial of the ICTY defendants is needed to see how these individuals carry on, shape, or counteract legacies of the Tribunal beyond the courtroom in The Hague.

Authors' Note

In this article, the author usage of gendered terms he/his and him also refers to she/her. Author wants to include all genders.

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Notes

1. Statement made during the 2017 International Criminal Tribunal for the Former Yugoslavia (ICTY) Legacy Conference in Sarajevo, where he furthermore suggested that, instead of the ICTY, "all the citizens in the countries in the region have the responsibility for reconciliation." See Dzidic D., Hague Tribunal President, "We Offered Truth, Not Reconciliation," *Balkan Transitional Justice*,. Retrieved from June 21, 2017 http://www.balkaninsight.com/en/article/hague-tribunal-president-we-offered-truth-not-reconciliation
2. This is not to say that acceptance of responsibility may not have emotional implications and dimensions. Presumably, some people can accept responsibility without remorse or any emotional difficulty, while others may, for example, view the acceptance of responsibility as an emotional act with the potential to change self-concept and relationships with others.

3. For interpersonal reconciliation between victims and offenders, compare Hodgins and Liebeskind (2003), Kremer and Stephens (1983), and Gobodo-Madikizela (2003). For importance of acceptance of responsibility for broader civic and political reconciliation, see de Greiff (2007).
4. It should also be noted that these considerations still remain largely theoretical and indeed a matter of "belief." An empirical assessment of these assumptions is still to be offered. Compare Byrne (2006, p. 495).
5. Similarly, Tangney, Stuewig, and Hafez (2011) contend that emotions like shame and guilt may represent a critical stepping stone in the rehabilitation process.
6. For more general information regarding the post-conviction stage at the ICTY, see Hola and van Wijk (2014).
7. Six individuals have died after their trial or during incarceration (including Milan Gvero who died after being granted early release but before his actual release).
8. Sixteen of these pleaded guilty on trial.
9. Art 28 ICTY Statute and Rules 123, 124 ICTY Rules of Procedure and Evidence.
10. Available at http://icr.icty.org/default.aspx. We have searched the database using key words: "early release," "commutation of sentence," "sentence remmission," "release," and "commutation."
11. From the 53 individuals who were eventually granted early release, 45 individuals were granted their early release upon their first application, 4 individuals had to apply twice (Haradin Bala, Ivica Rajic, Dario Kordic, and Zoran Zigic), 2 convicts applied 3 times before their early release was granted (Mlado Radic, Predrag Banovic), and 2 individuals 4 times (Momcilo Krajisnik, Dragan Zelenovic).
12. Dragoljub Kunarac is still imprisoned despite having served two thirds of his sentence. His early release request was rejected due to his limited rehabilitation (dealing drugs/clashes with prisoners/denies his crimes, etc.); Stanislav Galic is also still serving his life imprisonment sentence. Despite being eligible for early release under German law, the President rejected his early release application and decided that those convicted to life imprisonment should serve at least 30 years before becoming eligible for early release. Milomir Stakic is also still imprisoned. His early release application was rejected by the President as at the time of the decision Stakic had not served two thirds of his sentence and denies his responsibility, which was taken into account as one of the factors in assessing his rehabilitation and noted with concern by the President. Finally, Goran Jelisic is still serving his time in Italy. He filed several applications for sentence remission according to the Italian law, which has been granted and approved by President, but with no consequences for his future early release application according to the ICTY practice.
13. A codebook that was used to create a spreadsheet is available with the authors. In the early release decisions, a prisoner's attitude toward his crimes is usually discussed as part of summaries by the President of submissions of the parties, that is, prison authorities, in psychological reports, by a convict, or by the Prosecution; and in the President's considerations of these submissions.
14. In 2007, the President noted that Radic did not demonstrate enough signs of rehabilitation despite the fact that his behavior in prison was good as "this is outweighed by his denial of having committed rape and sexual assault" as detailed by the French authorities in their submissions. Prosecutor v. Mlado Radic (2007).
15. Radic's early release is rejected, however, due to the fact that Radic had not served two thirds of his sentence and the gravity of his crimes as factors counting against his early release. See also Prosecutor v. Milomir Stakic, 2011, paras. 31, 34, 35, where the President explicitly seem to prioritize a good behavior in prison in the assessment of level of rehabilitation
16. Often together with other factors, such as not serving two thirds of a sentence or gravity of crimes. Compare also Stakic (2011), Zelenovic (2015), and Prosecutor v. Dragan Zelenovic, Public Redacted Version of the August 28, 2015 Decision of the President on the Early Release of Dragan Zelenovic (MICT-15-89-ES), MICT, September 15, 2015, paras. 18 and 20.
17. It should, however, be noted that this is one of the first ICTY early release decisions and that the substantiation for the decision is very rudimentary.
18. See the decisions of 2007 (*Prosecutor v. Mlado Radic*, 2007, para. 15) and in 2010 (*Prosecutor v. Mlado Radic*, 2010, para. 18) as briefly discussed above in the main text.

19. The other two are Kunarac and Bala; there are also instances where prisoners served in practice more than two thirds of their sentence but not due to the fact the President rejected their request for early release. In case of Banovic, who applied several times, the main reason was incompatibility of the French system of sentence remissions with the Tribunals regulations. In case of others, it was often the case that their early release requests were filed only after the two thirds threshold was reached. Compare Jokic D., Ojdanic, Pandurevic, Plavsic, Simic M., Tadic M., Zaric, or Mucic. In many of these cases, the prisoners in essence served two thirds of their sentence in the UN detention during a trial due to a lengthy proceedings and applied for early release only after the verdict was finalized.
20. Unfortunately, due to a heavily redacted character of the 2013 decision, it is impossible to assess to what extent Radic's previous denial of crimes or his sudden change of outlook, despite concerns expressed by the French authorities as discussed earlier, weighed in this assessment.
21. Esad Landzo expressed his regrets during the trial but did not plead guilty.
22. Also interesting to compare to cases, where defendants pleaded guilty during their trials but change their attitude during incarceration such as Biljana Plavsic or Dragan Zelenovic.
23. Sometimes, in particular in cases of guilty pleas, the President also refers back to prisoner's acknowledgement of guilt and remorse expressed during the trial in order to evaluate his level of rehabilitation, such as in the cases of Biljana Plavsic and Damir Dosen.
24. It is not uncommon, however, that psychological evaluations of ICTY prisoners are not made available to the ICTY or not done at all in national prisons.
25. Josipovic is considered rehabilitated mainly due to his good behavior in prison and early release granted.

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